



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2021-0140]

Entry-Level Driver Training: Application for Exemption; Oak Harbor Freight Lines, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that Oak Harbor Freight Lines, Inc., (Oak Harbor) has applied for an exemption from the qualification requirements pertaining to entry-level driver training (ELDT) theory instructors, as set forth in the definition of “theory instructor”. Oak Harbor requests the exemption so that the company’s safety supervisor, Mr. Jeff McLaughlin, will be able to conduct classroom (theory) training for entry-level drivers who intend to operate commercial motor vehicles (CMV) used in the transportation of hazardous materials (HM). The company states the exemption is warranted due to Mr. McLaughlin’s experience and expertise related to the transportation of HM. Oak Harbor also states that the road portion of the training would be completed by behind-the-wheel (BTW) instructors that meet the ELDT requirements.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS**

AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2021-0140 by any of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. See the **Public Participation and Request for Comments** section below for further information.
- **Mail:** Docket Management Facility, U.S. Department of Transportation, 1200

New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140,
Washington, DC 20590-0001.

- **Hand Delivery or Courier:** Docket Operations, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.
- **Fax:** 1-202-493-2251

Each submission must include the Agency name and the docket number for this notice (FMCSA-2021-0140). Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the **Privacy Act** heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety

Standards; (202-366-4225); MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2021-0140), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to www.regulations.gov and put the docket number, “FMCSA-2021-0140” in the “Search” box, and click “Search.” When the new screen appears, click on “Documents” button, then click “Comment” button associated with the latest notice posted. Another screen will appear, insert the required information. Choose whether you are submitting your comment as an individual, an organization, or anonymous. Click “Submit Comment.”

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the *Federal Register* (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the *Federal Register* (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulatory Requirements

The Agency's ELDT regulations, set forth in 49 CFR part 380, subparts F and G, establish theory and BTW training requirements for individuals seeking to obtain a Class A or Class B CDL or a passenger (P), school bus (S), or hazardous materials (H) endorsement for the first time. The regulations take effect on February 7, 2022. The regulations require that ELDT be conducted only by qualified training providers and training instructors; drivers must obtain ELDT from a training provider listed on FMCSA's Training Provider Registry. The theory training instructor qualifications, set forth in the definition of "theory instructor" in 49 CFR 380.605, are: (1) the instructor must hold a CDL of the same (or higher) class and with all endorsements necessary to

operate the CMV for which training is to be provided and has at least 2 years of experience driving a CMV requiring a CDL of the same (or higher) class and/or the same endorsement and meets all applicable State qualification requirements for CMV instructors; or (2) the instructor must hold a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided and has at least 2 years of experience as a BTW CMV instructor and meets all applicable State qualification requirements for CMV instructors. The definition of “theory instructor” in 49 CFR 380.605 includes an exception from the requirement that the instructor currently hold a CDL and relevant endorsements if the instructor previously held a CDL of the same or higher class and complies with the other requirements set forth in the definition.

Unlike the P and S endorsement training curricula, which include both theory and BTW portions, the required H endorsement training is theory only. The H endorsement theory curriculum, set forth in Appendix E, applies to driver-trainees who intend to use CMVs to transport hazardous materials as defined in 49 CFR 383.5. Because applicants are not required to take an HM-specific skills test to obtain the H endorsement, the ELDT regulations do not contain a BTW curriculum requirement applicable to that endorsement. There are, however, BTW ELDT requirements for applicants seeking a Class A or Class B CDL or a P or S endorsement.

Applicant's Request

Oak Harbor seeks an exemption, on behalf of its Pacific Northwest Safety Supervisor, Mr. Jeff McLaughlin, from the ELDT theory instructor qualifications set forth in the definition of the term “theory instructor” in 49 CFR 380.605, as previously identified. Oak Harbor requests the exemption so that Mr. McLaughlin will be able to provide ELDT theory instruction pertaining to the transportation of HM by CMV. Oak Harbor cites Mr. McLaughlin’s extensive teaching experience and subject matter

expertise as the basis for its exemption request. Oak Harbor further states that the road portion of the training would be completed by BTW instructors that meet the ELDT requirements. A copy of the exemption application is in the docket referenced at the beginning of this notice¹.

IV. Equivalent Level of Safety

Oak Harbor states that Mr. McLaughlin's experience and expertise in the HM field would supersede HM training offered by other theory and BTW training instructors and would enhance their HM materials and safety program. Oak Harbor provided the following list of Mr. McLaughlin's credentials:

- Over 20 years of experience as a certified State commercial vehicle inspector holding certifications in Commercial Vehicle Safety Alliance (CVSA) Part A and B, Hazardous Materials, Tank and other bulk packaging's, Motorcoach and Multi Surface HM Transportation;
- 18 years of experience as an FMCSA National Training Center Basic HM instructor;
- Previous Region IV Cooperative Hazardous Materials Enforcement Development (COHMED) Vice Chairman;
- Current COHMED Industry Liaison;
- Former Training Lieutenant, Supervisory Lieutenant and District Captain in charge of CVSA and Hazardous Materials training and recertification programs for the Montana Motor Carrier Services;
- Certified civilian CVSA Hazardous Materials instructor;
- Former Sergeant, Lieutenant and Captain overseeing CMV inspectors at the Montana/Alberta Joint Use Vehicle Inspection Station Coutts, AB regulating enforcement of FMCSA and Transport Canada regulations pertaining to vehicle safety and hazardous material/dangerous goods regulations .

V. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on Oak Harbor's application for an exemption from the qualification requirements set forth in the definition of "theory instructor" in 49 CFR

¹ The Agency notes that Oak Harbor's application requests exemption specifically from the requirement that theory instructors hold a CDL of the same (or higher) class and with all endorsement necessary to operate the CMV for which training is to be provided. On August 30, 2022, in a conversation with Oak Harbor's Safety Manager, Mr. Tom Mueller, FMCSA personnel confirmed that Oak Harbor is seeking exemption from all the theory instructor qualification requirements set forth in the definition of "theory instructor" in 49 CFR 380.605. A summary of that conversation can be found in the docket for this notice.

380.605. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,
Associate Administrator for Policy.

MCPSD: PRobinson;8-12-2021/Rev'd 8-31-2021; LMimms
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[FR Doc. 2021-19440 Filed: 9/7/2021 8:45 am; Publication Date: 9/8/2021]